

SC declares ancestral domain deal 'unconstitutional'

By MIKE FRIALDE

The Supreme Court struck down as unconstitutional yesterday the agreement on ancestral domain with a warning that "another state within the Philippines" would have been created if the government and the Moro Islamic Liberation Front had signed it.

In the 89-page decision, the SC said the Bangsamoro Juridical Entity envisioned in the agreement is a "far more powerful entity" than the Autonomous Region in Muslim Mindanao provided in the Constitution.

"It is not merely an expanded version of the ARMM, the status of its relationship with the national government being fundamentally different from that of the ARMM," read the decision.

"Indeed, BJE is a state in all but name as it meets the criteria of a state."

The SC ordered the respondents and their agents not to sign and execute the agreement on ancestral domain or similar agreements, and to conduct public consultations in accordance with the right to information as to any further peace negotiations with the MILF.

Named as respondents in the case were the government peace panel on ancestral domain represented by Secretary Rodolfo Garcia, lawyers Leah Arriamento, Sedfrey Candelaria and Mark Ryan Sullivan, and retired Gen. Hermogenes Esperon, the Presidential Adviser on the Peace Process.

The SC said the agreement could not be reconciled with the Constitution and the law.

"Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the Bangsamoro Juridical Entity (BJE), are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence," it said.

The SC said the agreement "virtually guarantees" that necessary amendments to the Consti-

tion and the laws would be put in place to allow the agreement to be implemented.

"Upholding such an act would amount to authorizing a usurpation of the constituent powers vested only in Congress, a Constitutional Convention, or the people themselves through the process of initiative, for the only way that the executive can ensure the outcome of the amendment process is through an undue influence or interference with that process," read the decision.

The SC said neither the respondents nor President Arroyo was authorized to make such a guarantee.

The act of the government peace panel assuring that the Constitution would be amended made the agreement "fatally defective," added the decision.

The SC said the respondent's failure to consult concerned local governments or communities on the agreement violated its mandate under Executive Order No. 3.

The respondents exceeded their authority by the mere act of guaranteeing amendments to the Constitution, added the decision.

The SC said the agreement's contents are matters involving public interest in the highest order.

"In sum, the Presidential Adviser on the Peace Process committed grave abuse of discretion when he failed to carry out the pertinent consultation process, as mandated by Executive Order No. 3 (Defining Policy and Administrative Structure for Government's Comprehensive Peace Efforts) Republic Act 7160 (Local Government Code of 1991), and Republic Act 8371 (the Indigenous Peoples Rights Act of 1997)," read the decision.

"The further process by which the MOA-AD was designed and crafted runs contrary to and

in excess of the legal authority, and amounts to a whimsical, capricious, oppressive, arbitrary and despotic exercise thereof. It illustrates a gross evasion of positive duty and a virtual refusal to perform the duty enjoined."

In a separate opinion, Chief Justice Reynato Puno said the President must faithfully execute the Constitution and the law when negotiating peace with the MILF.

"The President can seek peace with the MILF, but without crossing the parameters of powers marked in the Constitution to separate the other branches of government to preserve our democracy," read Puno's opinion.

"For even in times of war, our system of checks and balances cannot be infringed. More so in times where the only danger that faces the State is the lesser danger of rebellion... Needless to stress, the power of the President to negotiate with the MILF is not plenary."

"While a considerable degree of flexibility and breadth is accorded to the peace negotiating panel, the latitude has its limits - the Constitution."

"The Constitution was ordained by the sovereign people and its postulates may not be employed as bargaining chips without their prior consent."

The government peace negotiators "conducted themselves free from the strictures of the Constitution," Puno said.

Justice Consuelo Ynates-Santiago for her part added that the MOA-AD "contains provisions which are repugnant to the Constitution and which will result in the virtual surrender of part of the Philippines' territorial sovereignty."

Justice Santiago said the agreement would have bound the government to the creation of an independent Bangsamoro state with its own territory, government, civil institutions, and

armed forces.

"The sovereignty and territorial integrity of the Philippines would have been compromised," she said.

In a separate opinion, Justice Adolfo Azcuna said had the agreement been signed, it would have "provided the basis for a claim in an international court that the Philippines was bound by its terms at the very least as a unilateral declaration made before representatives of the international community with vital interests in the region."

Azcuna said unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations.

"Declarations of this kind may be very specific," read Azcuna's opinion.

"When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking. Such undertaking, if given publicly, and with an intent to be bound is binding upon the parties."

The decision was written by Justice Conchita Carpio-Morales.

Eight justices voted to declare the agreement on ancestral domain unconstitutional: Chief Justice Puno, Justices Santiago, Morales, and Azcuna, Antonio Carpio, Ruben Reyes, Leonardo Quinsimbing and Ma. Alicia Austria-Martinez.

Seven voted to declare it "moot and academic" seeking to dismiss the petitions against the agreement: Justices Dante Tiña, Minita Chico-Nazario, Presbitero Velasco Jr., Antonio Eduardo Nachura, Teresita Leonardo-de Castro, Arturo Brion and Renato Corona.

The main case questioning the constitutionality of the agreement on ancestral domain was filed by the province of Cotabato, the city of Zamboanga, the city of Iligan, and the province of Zamboanga del Norte.

The intervenors in support of the main case were Makati Mayor Jejomar Binay, former senators Ernesto Maceda and Franklin Drilon, lawyer Aquilino Pimentel III, and Sen. Manuel Roxas II.

Last Aug. 4, the signing of the agreement on ancestral domain in Kuala Lumpur, Malaysia was stopped when the SC issued a temporary restraining order.

The SC then set the holding of an oral argument on the case last Aug. 15 - with Jess Diaz, Delon Porcalla, Paolo Romero, Aurea Calica, John Unson, Ruel Pareño